

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B06

PLR-117697-08

Date:

July 18, 2008

Legend

Distributing =

Controlled =

Business =

A =

B =

C =

D =

e =

f =

g =

h =

i =

j =

k% =

l% =

m% =

n% =

o% =

p% =

q% =

X =

Y =

Dear :

This letter responds to your April 14, 2008 letter from your authorized representatives requesting rulings on certain federal income tax consequences of a proposed transaction. Additional information was received subsequently. The information provided in these letters is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and except where expressly provided has made no determination regarding, whether the distribution (described below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

Distributing is an S corporation engaged in Business. Distributing has outstanding voting and non-voting common stock, held as follows:

Shareholder	Number of Voting Shares	Percentage	Number of Non-Voting Shares	Percentage
A	g	n%	i	m%
B	f	l%	i	m%
C	h	o%	j	p%
D	e	k%		
Total	X	q%	Y	q%

Individuals A and B are married and individuals C and D are married. Individuals A and C are sisters.

Financial information has been received indicating that Business has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

For valid corporate business purposes described herein, Distributing desires to separate Business. The separation is intended to be accomplished by the following steps:

(i) Distributing will transfer p% of the assets used in Business to Controlled, a newly formed, wholly owned subsidiary, in exchange for all of the Controlled stock and the assumption by Controlled of certain liabilities associated with the transferred assets (the "Contribution"). Controlled will have the same number and class of shares as Distributing.

(ii) Distributing will distribute all of the Controlled stock to C and D solely in exchange for all of their Distributing stock (the "Distribution").

(iii) Controlled will elect to be taxed as an S corporation.

The following representations have been made in connection with the Contribution and Distribution (collectively, the "Proposed Transaction"):

(a) Controlled and its shareholders will pay all expenses associated with the Proposed Transaction.

(b) Any indebtedness owed by Controlled to Distributing after the Proposed Transaction will not constitute stock or securities.

(c) The fair market value of the Controlled stock received by each of C and D will be approximately equal to the fair market value of the Distributing stock surrendered by each such shareholder in the exchange.

(d) No part of the Controlled stock to be distributed by Distributing to C and D will be received by either of them as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(e) The five years of financial information submitted on behalf of Business that will be conducted by Distributing immediately after the Proposed Transaction represents its present operation and, with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted.

(f) The five years of financial information submitted on behalf of Business that will be conducted by Controlled immediately after the Proposed Transaction represents its present operation and, with regard to that business, there have been no substantial operational changes since the date of the last financial statements submitted.

(g) Following the Proposed Transaction, Distributing and Controlled will each continue, independently and with its separate employee(s), the active conduct of its share of all the integrated activities of Business conducted by Distributing before the Proposed Transaction.

(h) The Proposed Transaction will be carried out for the following corporate business purposes: (i) to eliminate conflicts and disagreements between A and C over how the Business should be conducted, and (ii) to allow each individual to go her separate way and apply her own approach to the operation of the Business. The distribution is motivated, in whole or substantial part, by these corporate business purposes.

(i) The Proposed Transaction will not be used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(j) The total adjusted bases and the fair market value of the assets of the Business transferred to Controlled by Distributing in the Proposed Transaction will each equal or exceed the sum of: (i) the total liabilities to be assumed (within the meaning of § 357(d)) by Controlled, and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing from Controlled and transferred to its creditors in connection with the transaction.

(k) The liabilities to be assumed (within the meaning of § 357(d)) by Controlled in the Proposed Transaction were incurred in the ordinary course of business and are associated with the assets being transferred.

(l) The total fair market value of the assets that Distributing will transfer to Controlled will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Distributing from Controlled in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

(m) The aggregate fair market value of the assets contributed to Controlled in the Contribution will exceed the aggregate basis of those assets.

(n) Distributing has not accumulated, and will not accumulate, its receivables or make any extraordinary payment of its payables in anticipation of the Proposed Transaction.

(o) No intercorporate debt will exist between Distributing and Controlled at the time of, or subsequent to, the Proposed Transaction.

(p) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(q) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying the aggregation rules of § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled stock that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(r) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(s) To the extent any transfer in the Proposed Transaction is an early disposition of property for which an investment credit has been (or will be) claimed under § 46, the income tax liability for the taxable year in which the investment credit property (including

any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536(1990), if applicable) to reflect the early disposition of the property.

(t) Immediately after the Proposed Transaction, less than two-thirds of the assets of each of Distributing and Controlled will be investment assets, as defined in § 355(g)(2)(B).

(u) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(v) The Proposed Transaction is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(w) Upon formation, Controlled will be classified as an association taxable as a corporation for federal tax purposes.

(x) Upon formation, Controlled will not elect to be classified as qualified subchapter S subsidiary.

Based on the information submitted and the representations provided, we rule as follows in connection with the Proposed Transaction:

1. The Contribution and the Distribution will constitute a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" within the meaning of § 368(b).
2. Distributing will not recognize any gain or loss on the Contribution (§§ 357(a) and 361(a)).
3. Controlled will not recognize any gain or loss on the Contribution (§ 1032(a)).
4. Controlled's basis in each asset received from Distributing in the Contribution will equal the basis of that asset in the hands of Distributing immediately before such Contribution (§ 362(b)).
5. Controlled's holding period in each asset received from Distributing in the Contribution will include the period during which Distributing held that asset (§ 1223(2)).

6. Earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h) and § 1.312-10(a).
7. Distributing will not recognize any gain or loss on the Distribution (§ 361(c)).
8. Neither C nor D will recognize any gain or loss (nor otherwise include any amount in income) upon the Distribution (§ 355(a)).
9. The basis of the Controlled stock in the hands of C and D, in each case, will be the same as the basis in their Distributing stock (§ 358(a)(1)).
10. A Distributing shareholder's holding period in the Controlled stock received will include that shareholder's holding period for the Distributing stock surrendered in exchange therefor, provided that the Distributing stock is held as a capital asset on the date of the Proposed Transaction (§ 1223(1)).
11. The momentary ownership by Distributing of the stock of Controlled, as part of the reorganization under § 368(a)(1)(D), will not cause Controlled to have an ineligible shareholder for any portion of its first taxable year under § 1361(b)(1)(B). If Controlled otherwise meets the requirements of § 1361(b)(1), Controlled will be eligible to make an election under § 1362(a) to be classified as a subchapter S corporation for its first taxable year, provided such election is made effective immediately after the distribution of Controlled.
12. Provided that the assets of Business, currently held by Distributing, are not presently subject to the built-in gain provisions of § 1374, the portion of those assets transferred to Controlled will continue to not be subject to the built-in gain provisions of § 1374 in the hands of Controlled.

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Distribution satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the Proposed Transaction is used principally as a device for the distribution of the earnings and profits of the distributing corporation or controlled corporation or both (see § 355(a)(1)(B) and § 1.355-2(d)); (iii) whether the Proposed Transaction is part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii), (iv) whether Distributing is a valid S corporation and, (v) whether Controlled is otherwise eligible to be an S corporation.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Alfred C. Bishop, Jr.
Branch Chief, Branch 6
(Corporate)

cc: